



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2022-0074]

RIN 1625-AA87

Security Zone; Grounded Tug and Barge, Deerfield Beach, FL

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone for certain navigable waters of the Atlantic Ocean within a 1000 yard radius of a grounded tug and barge, the SEA EAGLE, on Deerfield Beach containing a cargo of national security interest. This action is necessary to protect the cargo and surrounding waterway from terrorist acts, sabotage or other subversive acts, accidents, or other events of a similar nature. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Miami.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], through 11:00 a.m. on February 11, 2022. For the purposes of enforcement, actual notice will be used from 12:00 p.m. on February 4, 2022, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0074 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Omar Beceiro, Waterways Management Division, U.S. Coast Guard; telephone: (305) 535-4317, email: Omar.Beceiro@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to protect a cargo of national security interest, on board the grounded barge. This vessel ran aground in the early morning hours of February 4, 2022, and immediate action is needed to protect the vessel, it’s cargo, response personnel, and the waterway. It would be impracticable to publish an NPRM because we must establish this security zone by February 4, 2022.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to protect the cargo of national security interest, the vessel, response personnel,

and the waterway.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP Miami has determined a cargo of national security interest is on board the grounded tug and barge, and the cargo presents a potential target for terrorist acts, sabotage, or other subversive acts, accidents, or other causes of a similar nature. This security zone is needed to protect the cargo of national security interest, response personnel, the vessel, and the surrounding waterway, until the tug and barge is refloated or cargo removed.

IV. Discussion of the Rule

This rule establishes a security zone from 12:00 p.m. on February 4, 2022 to 11:00 a.m. on February 11, 2022. The security zone will cover all navigable waters of the Atlantic Ocean within 1000 yards of the grounded tug and barge. The duration of the zone is intended to protect a cargo of national security interest, response personnel, the vessel, and surrounding waterway until the brage is refloated or cargo removed. No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been

reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and scope of the security zone. The zone is limited in size, location, and duration as it will cover all navigable waters of the Atlantic Ocean within 1000 yards of the grounded SEA EAGLE, and will last only one week. The zone is limited in scope as vessel traffic will be able to safely transit around this security zone and vessels may seek permission from the COTP to enter the zone. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the security zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small

Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted

for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves an emergency security zone lasting less than 7 days that will prohibit entry within 1000 yards of the grounded tug and barge. This type of action is categorically excluded from further review under paragraph L60(c) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;
Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T07-0074 to read as follows:

§ 165.T07-0074 Security Zone; Grounded Tug and Barge, Deerfield Beach, FL.

(a) *Locations.* The following is a temporary security zone: All waters of the Atlantic Ocean within a 1000 yard radius of position 26° 19' 13.94"N, 080° 4' 25.68"W. The coordinates are in NAD 83.

(b) *Definition.* The term *designated representative* means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port (COTP) Miami in the enforcement of the security zone.

(c) *Regulations.* (1) No person or vessel will be permitted to enter, transit, anchor, or remain within the security zone unless authorized by the COTP Miami or a designated representative. If authorization is granted, persons and/or vessels receiving such authorization must comply with the instructions of the COTP Miami or designated representative.

(2) Persons who must notify or request authorization from the COTP may do so by telephone at (305) 535-4313, or may contact a designated representative via VHF radio on channel 16.

(d) *Enforcement period.* This section will be enforced from 12:00 p.m. on February 4, 2022, through 11:00 a.m. on February 11, 2022.

Dated: February 4, 2022.

J. F. Burdian,

Captain, U.S. Coast Guard,

Captain of the Port Miami.

